



**Federal Communications Commission
Enforcement Bureau
Investigations and Hearings Division
445 12th Street, SW, Suite 4-C330
Washington, D.C. 20554**

May 21, 2009

DA 09-1115

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED AND AND FACSIMILE (803) 252-8290

Ms. Cynthia K. Ayer
c/o James Edward Holler
Holler Dennis Corbett Ormond Plante and Garner
P.O. Box 11006
Columbia, SC 29211

Re: Notice of Debarment, File No. EB-09-IH-0002

Dear Ms. Ayer:

Pursuant to section 54.8 of the rules of the Federal Communications Commission (the "Commission"), by this Notice of Debarment you are debarred from the schools and libraries universal service support mechanism (or "E-Rate program") for a period of three years.¹

On February 26, 2009, the Enforcement Bureau (the "Bureau") sent you a Notice of Suspension and Initiation of Debarment Proceedings (the "Notice of Suspension").² That Notice of Suspension was published in the Federal Register on March 19, 2009.³ The Notice of Suspension suspended you from the schools and libraries universal service support mechanism and described the basis for initiation of debarment proceedings against you, the applicable debarment procedures, and the effect of debarment.⁴

Pursuant to the Commission's rules, any opposition to your suspension or its scope or to your proposed debarment or its scope had to be filed with the Commission no later than thirty (30) calendar days from the earlier date of your receipt of the Notice of Suspension or publication of the Notice of Suspension in the Federal Register.⁵ The Commission did not receive any such opposition.

As discussed in the Notice of Suspension, you pled guilty to mail fraud in connection with your participation in the E-Rate program.⁶ You admitted to, among other things, submitting

¹ See 47 C.F.R. §§ 0.111(a), 54.8.

² Letter from Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Ms. Cynthia K. Ayer, Notice of Suspension and Initiation of Debarment Proceedings, 24 FCC Rcd 2470 (Inv. & Hearings Div., Enf. Bur. 2009) (Attachment 1).

³ 74 Fed. Reg. 11726-01 (Mar. 19, 2009).

⁴ See Notice of Suspension, 24 FCC Rcd at 2470-71.

⁵ See 47 C.F.R. §§ 54.8 (e)(3) and (4). That date occurred no later than April 20, 2009. See *supra* note 3.

⁶ See Notice of Suspension, 24 FCC Rcd at 2470.

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applications containing false information to the E-Rate program and subsequently receiving funds to which you were not entitled.⁷ Such conduct constitutes the basis for your debarment, and your conviction falls within the categories of causes for debarment under section 54.8(c) of the Commission's rules.⁸ For the foregoing reasons, you are hereby debarred for a period of three years from the debarment date, *i.e.*, the earlier date of your receipt of this Notice of Debarment or its publication date in the Federal Register.⁹ Debarment excludes you, for the debarment period, from activities "associated with or related to the schools and libraries support mechanism," including "the receipt of funds or discounted services through the schools and libraries support mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism."¹⁰

Sincerely,

Hillary S. DeNigro
Chief
Investigations and Hearings Division
Enforcement Bureau

cc: Kristy Carroll, Esq., Universal Service Administrative Company (via e-mail)
Beth Drake, Assistant United States Attorney, United States Department of
Justice (via email)

⁷ *See id.*

⁸ 47 C.F.R. § 54.8(c).

⁹ *See* 47 C.F.R. § 54.8(g) *See also* Notice of Suspension, 24 FCC Rcd at 2471.

¹⁰ *See* 47 C.F.R. §§ 54.8(a)(1), 54.8(a)(5), 54.8(d); Notice of Suspension, 24 FCC Rcd at 2470.



Attachment 1
**Federal Communications Commission
Enforcement Bureau
Investigations and Hearings Division
445 12th Street, SW, Suite 4-C330
Washington, D.C. 20554**

February 26, 2009

DA 09-476

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED AND E-MAIL

Ms. Cynthia K. Ayer
c/o James Edward Holler
Holler Dennis Corbett Ormond Plante and Garner
P.O. Box 11006
Columbia, SC 29211

**Re: Notice of Suspension and Initiation of Debarment Proceedings,
File No. EB-09-IH-0002**

Dear Ms. Ayer:

The Federal Communications Commission (“FCC” or “Commission”) has received notice of your conviction of mail fraud, in violation of 18 U.S.C. §§ 2 and 1341, in connection with your participation in the schools and libraries universal service support mechanism (“E-Rate program”).¹ Consequently, pursuant to 47 C.F.R. § 54.8, this letter constitutes official notice of your suspension from the E-Rate program. In addition, the Enforcement Bureau (“Bureau”) hereby notifies you that we are commencing debarment proceedings against you.²

¹ Any further reference in this letter to “your conviction” refers to your guilty plea and subsequent conviction of one count of mail fraud. *United States v. Cynthia K. Ayer*, Criminal Docket No. 5:06-453 (001 MBS), Plea Agreement (D. S.C. filed and entered Apr. 30, 2008) (“*Ayer Plea Agreement*”); *United States v. Cynthia K. Ayer*, 5:06-453 (001 MBS), Judgment (D. S.C. filed and entered Dec. 11, 2008) (“*Ayer Judgment*”). See also *United States v. Cynthia K. Ayer*, Criminal Docket No. 5:06-453 (001 MBS), Indictment (D. S.C. filed Apr. 19, 2006 and entered Apr. 20, 2006) (“*Ayer Indictment*”).

² 47 C.F.R. § 54.8; 47 C.F.R. § 0.111 (delegating to the Enforcement Bureau authority to resolve universal service suspension and debarment proceedings). The Commission adopted debarment rules for the schools and libraries universal service support mechanism in 2003. See *Schools and Libraries Universal Service Support Mechanism*, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202 (2003) (“*Second Report and Order*”) (adopting section 54.521 to suspend and debar parties from the E-rate program). In 2007, the Commission extended the debarment rules to apply to all of the Federal universal service support mechanisms. *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight; Federal-State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Lifeline and Link Up; Changes to the Board of Directors for the National Exchange Carrier Association, Inc.*, Report and Order, 22 FCC Rcd 16372, 16410-12 (2007) (*Program Management Order*) (renumbering section 54.521 of the universal service debarment rules as section 54.8 and amending subsections (a)(1), (5), (c), (d), (e)(2)(i), (3), (e)(4), and (g)).

I. Notice of Suspension

The Commission has established procedures to prevent persons who have “defrauded the government or engaged in similar acts through activities associated with or related to the schools and libraries support mechanism” from receiving the benefits associated with that program.³ On April 30, 2008, you plead guilty to mail fraud in connection with your participation in the E-Rate program.⁴ While employed as a technology director for Bamberg County School District One in Bamberg, South Carolina, you admitted to submitting applications containing false information to the E-Rate program.⁵ You subsequently requested funds that you were not entitled to and caused the Universal Service Administrative Company (“USAC”) to send you a check in the amount of \$25,243 made payable to your company, Go Between Communications a/k/a Go Between Telecommunications.⁶ As a result of your conviction, you have been sentenced to serve two years in prison and ordered to pay \$468,496 in restitution to USAC for using the mail to submit fraudulent applications for E-Rate funding on behalf of Bamberg County School District One.⁷

Pursuant to section 54.8(a)(4) of the Commission’s rules,⁸ your conviction requires the Bureau to suspend you from participating in any activities associated with or related to the schools and libraries fund mechanism, including the receipt of funds or discounted services through the schools and libraries fund mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.⁹ Your suspension becomes effective upon the earlier of your receipt of this letter or publication of notice in the Federal Register.¹⁰

Suspension is immediate pending the Bureau’s final debarment determination. In accordance with the Commission’s debarment rules, you may contest this suspension or the scope of this suspension by filing arguments in opposition to the suspension, with any relevant documentation. Your request must be received within 30 days after you receive this letter or after notice is published in the Federal Register, whichever comes first.¹¹ Such requests, however, will not ordinarily be granted.¹² The Bureau may reverse or limit the scope of suspension only upon a finding of extraordinary circumstances.¹³ Absent extraordinary circumstances, the Bureau will

³ *Second Report and Order*, 18 FCC Rcd at 9225, ¶ 66. The Commission’s debarment rules define a “person” as “[a]ny individual, group of individuals, corporation, partnership, association, unit of government or legal entity, however, organized.” 47 C.F.R. § 54.8(a)(6).

⁴ *See Ayer Plea Agreement*. *See also* Department of Justice Press Release (Dec. 11, 2008), *available at* http://www.usdoj.gov/atr/public/press_releases/2008/240283.pdf (*DOJ Press Release*).

⁵ *DOJ Press Release* at 1.

⁶ *See Ayer Indictment* at 13-15; *DOJ Press Release* at 1.

⁷ *Ayer Judgment* at 2-4; *DOJ Press Release* at 1.

⁸ 47 C.F.R. § 54.8(a)(4). *See Second Report and Order*, 18 FCC Rcd at 9225-27, ¶¶ 67-74.

⁹ 47 C.F.R. § 54.8(a)(1)(d).

¹⁰ *Second Report and Order*, 18 FCC Rcd at 9226, ¶ 69; 47 C.F.R. § 54.8(e)(1).

¹¹ 47 C.F.R. § 54.8(e)(4).

¹² *Id.*

¹³ 47 C.F.R. § 54.8(e)(5).

decide any request for reversal or modification of suspension within 90 days of its receipt of such request.¹⁴

II. Initiation of Debarment Proceedings

Your guilty plea to criminal conduct in connection with the E-Rate program, in addition to serving as a basis for immediate suspension from the program, also serves as a basis for the initiation of debarment proceedings against you. Your conviction falls within the categories of causes for debarment defined in section 54.8(c) of the Commission's rules.¹⁵ Therefore, pursuant to section 54.8(a)(4) of the Commission's rules, your conviction requires the Bureau to commence debarment proceedings against you.

As with your suspension, you may contest debarment or the scope of the proposed debarment by filing arguments and any relevant documentation within 30 calendar days of the earlier of the receipt of this letter or of publication in the Federal Register.¹⁶ Absent extraordinary circumstances, the Bureau will debar you.¹⁷ Within 90 days of receipt of any opposition to your suspension and proposed debarment, the Bureau, in the absence of extraordinary circumstances, will provide you with notice of its decision to debar.¹⁸ If the Bureau decides to debar you, its decision will become effective upon the earlier of your receipt of a debarment notice or publication of the decision in the Federal Register.¹⁹

If and when your debarment becomes effective, you will be prohibited from participating in activities associated with or related to the schools and libraries support mechanism for three years from the date of debarment.²⁰ The Bureau may, if necessary to protect the public interest, extend the debarment period.²¹

Please direct any response, if by messenger or hand delivery, to Marlene H. Dortch, Secretary, Federal Communications Commission, 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002, to the attention of Rebekah Bina, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Room 4-C330, with a copy to Vickie Robinson, Assistant

¹⁴ See *Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70; 47 C.F.R. § 54.8(e)(5),(f).

¹⁵ "Causes for suspension and debarment are the conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism." 47 C.F.R. § 54.8(c). Such activities "include the receipt of funds or discounted services through [the Federal universal service] support mechanisms, or consulting with, assisting, or advising applicants or service providers regarding [the Federal universal service] support mechanism." 47 C.F.R. § 54.8(a)(1).

¹⁶ See *Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70; 47 C.F.R. § 54.8(e)(3).

¹⁷ *Second Report and Order*, 18 FCC Rcd at 9227, ¶ 74.

¹⁸ See *id.*, 18 FCC Rcd at 9226, ¶ 70; 47 C.F.R. § 54.8(e)(5).

¹⁹ 47 C.F.R. § 54.8(e)(5). The Commission may reverse a debarment, or may limit the scope or period of debarment upon a finding of extraordinary circumstances, following the filing of a petition by you or an interested party or upon motion by the Commission. 47 C.F.R. § 54.8(f).

²⁰ *Second Report and Order*, 18 FCC Rcd at 9225, ¶ 67; 47 C.F.R. § 54.8(d),(g).

²¹ 47 C.F.R. § 54.8(g).

Ms. Cynthia K. Ayer
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Chief, Investigations and Hearings Division, Enforcement Bureau, Room 4-C330, Federal Communications Commission. If sent by commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail), the response should be sent to the Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, Maryland 20743. If sent by first-class, Express, or Priority mail, the response should be sent to Rebekah Bina, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C330, Washington, DC, 20554, with a copy to Vickie Robinson, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C330, Washington, DC, 20554. You shall also transmit a copy of the response via email to Rebekah.Bina@fcc.gov and to Vickie.Robinson@fcc.gov.

If you have any questions, please contact Ms. Bina via mail, by telephone at (202) 418-7931 or by e-mail at Rebekah.Bina@fcc.gov. If Ms. Bina is unavailable, you may contact Ms. Vickie Robinson, Assistant Chief, Investigations and Hearings Division, by telephone at (202) 418-1420 and by e-mail at Vickie.Robinson@fcc.gov.

Sincerely yours,

Hillary S. DeNigro
Chief
Investigations and Hearings Division
Enforcement Bureau

cc: Beth Drake, Assistant United States Attorney (via e-mail)
Kristy Carroll, Esq., Universal Service Administrative Company (via e-mail)